	Case 5:09-cv-01937-VAP-FFM Document 4	Filed 10/21/09	Page 1 of 3	Page ID #	#: 109
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6	UNITED STATES DISTRICT COURT				
7	CENTRAL DISTRICT OF CALIFORNIA				
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10	ANTHONY A. EDWARDS,	No. EDCV	09-1937 VA	P (FFM)	
11	Petitioner,	ORDER SUMMARILY DISMISSIN PETITION FOR WRIT OF HABEA			ING
12	V.	CORPUS FOR LACK OF SUBJECT MATTER JURISDICTION			
13	DARREL G. ADAMS,				
14	Respondent.				
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16	On October 4, 2009, petitioner constructively filed a Petition Under 28				
17	U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody				
18	("Petition") herein. The face of the Petition demonstrates that the Petition is				
19	directed to the same May 6, 1998 San Bernardino County Superior Court				
20	conviction as a prior habeas petition filed by petitioner in this Court on June 6,				
21	2000, in Case No. EDCV 00-406 RT (Mc). On June 17, 2003, Judgment was				
22	entered in Case No. EDCV 00-406 RT (Mc) denying the Petition on the merits				
23	and dismissing the action with prejudice. Petitioner's appeal was dismissed on				
24	June 13, 2003.				
25	The Petition now pending is governed by the provisions of the				
26	Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-132, 110				
27	Stat. 1214) ("the Act") which became effective April 24, 1996. Section 106 of				
28	the Act amended 28 U.S.C. § 2244(b) to read, in pertinent part, as follows:				

- "(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.
- (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless --
 - (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
 - (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
 - (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.
- (3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

The Petition now pending constitutes a second and/or successive petition challenging the same conviction as petitioner's prior habeas petition in Case No. EDCV 00-406 RT (Mc), within the meaning of 28 U.S.C. § 2244(b). To the extent petitioner seeks to pursue a claim not contained in the earlier Petition, it

was incumbent on him under § 2244(b)(3)(A) to secure an order from the Ninth Circuit authorizing the District Court to consider the Petition, prior to his filing of it in this Court. Petitioner's failure to do so deprives the Court of subject matter jurisdiction. To the extent the instant Petition merely asserts any claims that were previously asserted, the Petition is subject to dismissal pursuant to § 2244(b)(1). For the foregoing reasons, IT IS ORDERED that this action be summarily dismissed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. LET JUDGMENT BE ENTERED ACCORDINGLY. DATED: October 21, 2009

United States District Judge

Presented by:

/S/ Frederick F. Mumm FREDERICK F. MUMM United States Magistrate Judge